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December 6, 2011

President Christina Olague
San Francisco Planning Commission
Attn: Linda Avery, Commission Secretary
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RE: Amendments to Articles 10 & 11 (Supervisor Scott Wiener)

Dear President Olague and Members of the Commission:

On behalf of San Francisco Architectural Heritage (Heritage), thank you for the opportunity to comment on proposed revisions to Articles 10 and 11 recommended by the Historic Preservation Commission (HPC) and further amendments introduced by Supervisor Scott Wiener. At the outset, in order to best inform the Planning Commission's deliberations, Heritage urges the Commission to withhold any recommendation concerning Articles 10 and 11 until it has received written comments from the HPC on all of Supervisor Wiener's amendments. While we are not opposed to all of Supervisor Wiener's amendments, we strongly oppose those which would make compliance with the *Secretary of the Interior's Standards* optional (Sections 1006.6, 1111.6), impose unique procedural hurdles on the designation of landmarks and historic districts (Sections 1004.3, 1107(e)), and exempt a large class of projects from historic review altogether (Section 1111(g)).

A. THE PLANNING COMMISSION SHOULD AWAIT THE HPC'S COMMENTS ON ALL OF SUPERVISOR WIENER'S AMENDMENTS

Over the course of three separate hearings, the HPC comprehensively reviewed, deliberated, questioned the need for, and/or recommended against adoption of the majority of Supervisor Wiener's proposed amendments. Yet none of the HPC's comments are included in your staff report, depriving the Planning Commission of critical input on policy changes that define the HPC's function and authority as a City-chartered commission. In some cases, legislative text recommended by the HPC has been wholly replaced by Supervisor Wiener's amended language without explanation or a presentation of the HPC's point of view. The most significant example is Supervisor Wiener's proposal to make compliance with the *Secretary of the Interior's Standards* optional rather than mandatory.¹

¹ The HPC has recommended language for Sections 1006.6 and 1116.6 stating that "proposed work **shall comply** with the Secretary of the Interior's Standards," whereas the replacement language inserted by Supervisor Wiener provides that "compliance with the Secretary of the Interior's Standards for specific application in San Francisco...**shall be considered**." (Emphasis added.)

At the November 16th HPC hearing, Commissioner Wolfram forcefully rejected this proposed amendment:

We need to very concretely reject that we're going to have standards that "shall be considered" as opposed to "the work shall comply with." [Supervisor Wiener's amended language] basically says that there are no standards for historic preservation the way it's worded now. I disagree very strongly that we should create our own standards. [T]he *Secretary's Standards* are a very useful and flexible tool used by countless communities around the country and there is no need to create "San Francisco Standards." (Emphasis added.)

At the request of President Chase, the Deputy City Attorney confirmed that Supervisor Wiener's proposed language would make compliance with the *Secretary's Standards* optional. Nonetheless, the staff report to the Planning Commission recommends approval of Supervisor Wiener's language without discussing significant concerns raised by the HPC. In another example, Supervisor Wiener has reinserted language requiring 66% owner consent to nominate a historic district, even though this threshold had been specifically deleted by the HPC. Again, the staff report recommends adoption of the reinserted text without explaining the HPC's rationale for removing it in the first place.

Unlike the Planning Commission, the HPC did not have actual legislative text to review, but had to rely on a series of five memos from Supervisor Wiener outlining an evolving array of policy proposals. Since the last HPC hearing on November 16, several other new amendments have been introduced by Supervisor Wiener, including an attempt to exempt "residential projects where 80% or more of the units are designated for households with an income of 150% or less than the area median income" from HPC review.²

The Department staff has been remarkably thorough, even-handed and diligent throughout the lengthy process updating Articles 10 and 11 and, more recently, in addressing concerns raised by Supervisor Wiener. As the process nears completion, it is paramount that the Planning Commission receive all relevant facts to inform its deliberations. It is premature for the Commission to take action on Articles 10 and 11 without the benefit of HPC's written comments on all of the Supervisor's proposed amendments.

B. HERITAGE ANALYSIS OF SUPERVISOR WIENER'S PROPOSED AMENDMENTS TO ARTICLES 10 & 11

1. ARTICLE 10

- **SECTION 1002.** Supervisor Wiener has inserted language that would require historic resource surveys to "be carried out with robust community engagement and pursuant to clearly set out, broadly available published procedures.

² Proposed amendment to Section 1111(g).

HERITAGE POSITION: Although Heritage supports “robust” community engagement, the Planning Code is not the right place for the proposed language. In order to be most responsive to the values and changing demographics of San Francisco’s residents, such policies and procedures to ensure community participation in the historic resource survey process (and other community planning processes) should instead be published in Department-wide administrative bulletins reviewed by the HPC and the Planning Commission.

- **SECTION 1004.1.** Reversing the unanimous recommendation of the HPC, Supervisor Wiener has reinserted language requiring 66% owner support as a prerequisite for community-sponsored historic district nominations. The HPC had specifically removed this provision from Section 1004.1.

HERITAGE POSITION: The intent of Proposition J was to update Articles 10 and 11 to reflect best practices nationwide. The 66% owner consent threshold is a relic of the original landmarks ordinance adopted in 1967 and is out of step with widely-recognized preservation practice today. As noted by the California Office of Historic Preservation, “The vast majority of preservation ordinances nationwide wisely avoid any type of owner consent provisions.”³ The 66% owner consent threshold imposes an extraordinarily high bar on neighborhood-sponsored nominations and completely disenfranchises all those who rent their homes in the city.

- **SECTION 1004.2 [NOT REVIEWED BY HPC].** For historic district nominations, Supervisor Wiener would require the Planning Commission to make findings that “(i) address the consistency of the proposed designation with the policies embodied in the General Plan and the priority policies of Section 101.1, particularly the provision of housing to meet the City’s Regional Housing Needs Allocation, and the provision of housing near transit corridors; (ii) identify any amendments to the General Plan necessary to facilitate adoption of the proposed designation; and (iii) evaluate whether the district would conflict with the Sustainable Communities Strategy for the Bay Area.”

HERITAGE POSITION: The proposed language improperly elevates the Regional Housing Needs Allocation, Sustainable Communities Strategy, and “the provision of housing near transit corridors” over other General Plan polices, including Priority Policy 7 (stating “that landmarks and historic buildings be preserved”). There has been no justification provided by Supervisor Wiener for this amendment, no review by the HPC, nor analysis by the Department staff of the potential adverse impacts on historic resources. Heritage opposes the amended language because it singles out proposed historic districts for disparate treatment. Indeed, no other zoning changes would be subject to such rigorous review against vague regional planning goals.

³ Technical Assistance Bulletin #14, “Drafting Effective Historic Preservation Ordinances: A Manual for California’s Local Governments” (California Office of Historic Preservation, 2005).

- **SECTION 1004.3.** Before the Board of Supervisors can vote on a proposed historic district, Supervisor Wiener proposes requiring the Planning Department to “invite all property owners in the proposed district area to express their opinion in writing on the proposed designation be it in the form of a vote or a survey” and to provide information to owners on “the practical consequences of the adoption of the district...” The amended language further provides that, “The Department’s goal shall be to obtain the participation of at least half of all property owners in the proposed district.”

HERITAGE POSITION: Heritage opposes any amendments that would impose unique procedural hurdles on the designation of historic districts.⁴ Historic districts should be subject to the same public outreach requirements as other proposed zoning changes. For the reasons outlined above, we feel that community engagement policies and procedures for historic districts, historic resource surveys, and other neighborhood planning processes should be published in administrative bulletins, and not in the Planning Code.

- **SECTION 1005(e)(4) [NOT REVIEWED BY HPC].** Supervisor Wiener is proposing an entirely new amendment to exempt work on a sidewalk or a street within a historic district from review under Article 10, unless they have been called out as a character-defining features in the designating ordinance.

HERITAGE POSITION: Heritage opposes the proposed amendment without an analysis of its potential impacts on the city’s 11 existing historic districts based on a review of the designating ordinance for each. Older designating ordinances tend to provide less detail on features that contribute to a historic district’s significance. In general, we support limiting review under Article 10 to contributing features listed in the designating ordinance, but only if applied prospectively.

- **SECTION 1006.1(e).** For projects that require multiple planning approvals, Supervisor Wiener would explicitly require the HPC and the Planning Commission to “take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions.” The proposed amendment is unnecessary because the HPC, like the Planning Commission, already makes consistency findings under Section 101 when reviewing applications for Certificates of Appropriateness.
- **SECTION 1006.1(f).** Heritage supports Supervisor Wiener’s proposal for a fee waiver for Certificates of Appropriateness in narrowly defined cases of economic hardship.
- **SECTION 1006.6(b).** Supervisor Wiener’s amendment directs the Planning Department to develop “Guidelines, Interpretations, Bulletins, or other Policies” that translate the *Secretary of the Interior’s Standards* for specific application in San Francisco. Compliance

⁴ The proposed amendment raises other policy and procedural issues regarding how the vote or survey would be conducted, where the funding would come from, the disenfranchisement of the resident renter community, how the Department would treat non-responses, and the legitimacy of community-sponsored petitions.

with the so-called “San Francisco Interpretation of the Secretary’s Standards” would merely be optional. The legislative text recommended by the HPC—stating that work “shall comply” with the *Secretary’s Standards*—has been deleted.

HERITAGE POSITION: Heritage strongly opposes Supervisor Wiener’s amendment to make compliance with the *Secretary’s Standards* (or local interpretations thereof) optional. As noted by the HPC, the proposed language would effectively eliminate any minimum standards for the treatment of historic buildings in San Francisco. This action would place the City’s Certified Local Government (CLG) status at risk. Under the City’s CLG agreement, decertification could result if “the commission substantially fails to maintain consistency of its design review decisions with the *Secretary’s Standards for Historic Preservation*.”

Furthermore, the proposal to develop an “Interpretation of the Standards for San Francisco” is a costly, time-consuming, and unnecessary exercise. The *Secretary’s Standards* provide ample flexibility to accommodate local development needs.⁵ Despite repeated requests by the HPC, Supervisor Wiener has not provided one example of a project that has been denied for failing to meet the *Secretary’s Standards*.

- **SECTION 1006.6(h).** This new subsection would exempt certain projects within historic districts and affordable housing projects from obtaining a Certificate of Appropriateness when conformance would create a significant economic hardship, provided that the scope of work does not include demolition, fees have been waived pursuant to Section 1006.1, all other aspects of the projects are Code-complying, and the HPC has determined that the proposal is not detrimental to the landmark or the district.

HERITAGE POSITION: Although we support this amendment in concept, Heritage joins the HPC in recommending that the proposed economic hardship provision be developed in an independent process with input from all affected parties.⁶ Any economic hardship exemption should first assure that all existing financial and regulatory incentives are readily available to qualifying applicants, particularly Mills Act property tax abatement. The new language to exempt “residential projects where 80% or more of the units are designated for households with an income of 150% or less than the area median income” has potentially far-reaching impacts, especially when applied in conjunction with Section 1004.2’s prioritization of regional housing goals over other General Plan policies.

⁵ The HPC and its predecessor, the Landmarks Preservation Advisory Board, have frequently applied the *Secretary’s Standards* to approve major additions to historic buildings and infill projects, such as 72 Townsend, 690 Market Street, and 178 Townsend (currently under construction).

⁶ “The HPC feels that substantive topics, such as language that addresses economic hardship, a requirement for community balloting prior to historic district designation, or the creation of local interpretations of the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*, merit additional research and further discussion prior to adoption.” Letter from Charles Chase, President, Historic Preservation Commission, to Supervisor Scott Wiener, December 1, 2011.

2. ARTICLE 11

- **SECTIONS 1107(d), 1107(e) and 1110(a)**. Same as Heritage position regarding Sections 1004.2, 1004.3, 1005(e)(4) above, respectively.
- **SECTION 1111(b)**. The proposed amendment would significantly narrow the scope of this section by exempting (1) all buildings that have not transferred TDR and (2) all Category V buildings from the requirement to provide an updated historic resource evaluation. The proposed amendment would also eliminate the ability of the HPC to consider “the amount and value of [available] untransferred TDR” when reviewing permits to demolish.

HERITAGE POSITION: Heritage joins the Planning Department in opposing the proposed amendment. Although the staff report to the Planning Commission does not discuss Section 1111(b), the Department has consistently recommended against changing this section. As stated in the November 16, 2011 staff report to the HPC: “The proposed amendment would remove the requirement to provide an updated historic evaluation for an unrated building (Category V) (there are a number of unrated buildings that are significant that the Downtown Plan overlooked or chose not to rate). Owners often apply to have a property reclassified in order to leverage TDR. This section was also intended to provide a mechanism for all properties that may demonstrate that a building previously identified as Significant or Contributory no longer has integrity and should be reclassified.”

- **SECTION 1111(g) [NOT REVIEWED BY THE HPC]**. This proposed amendment completely exempts “residential projects where 80% or more of the units are designated for households with an income of 150% or less than the area median income...from the requirements of Section 1111.” Unlike the proposed language in Section 1006.6, the proposed exemption is not contingent on demonstrating economic hardship or any other prerequisite findings by the HPC.

HERITAGE POSITION: The proposed language attempts to exempt an entire class of projects from historic review, clearing the path for demolition, insensitive alterations and new construction regardless of the significance of the structure or the surrounding historic district. Although the proposed exemption is tacked onto economic hardship language, it does not require any demonstration of economic hardship and would primarily benefit downtown housing developers, whether market-based or non-profit. Of greater concern, the proposed exemption is in direct conflict with the City’s obligations as a Certified Local Government. The City’s CLG status has enabled it to assume Section 106 review authority to streamline approval of federally-funded affordable housing projects involving historic resources.⁷ As noted by the California Office of Historic Preservation, “review by San

⁷ Programmatic Agreement By and Among the City and County of San Francisco, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Historic Properties Affected by Use of Revenue from the Department of Housing and Urban Development Part 58 Programs, January 19, 2007. In June 2011, the Mayor’s Office of Housing reported that “our expectation that review times for individual projects [under the Programmatic Agreement] would decrease was realized.”

Francisco of undertakings subject to review under Section 106 of the National Historic Preservation Act (36 CFR Part 800),” including affordable housing projects that receive federal funding, “must use the *Secretary of the Interior’s Standards*.”⁸

- **SECTION 1111.7(a)(1).** Heritage opposes the proposed amendment because it would exempt an entire class of buildings (Category III from which no TDR has been transferred) from review. We propose this section be rewritten as follows: “(a) For Contributory Buildings in a Conservation District (Category IV) from which TDR have been transferred, and for Significant Buildings (Category I and II), Contributory Buildings (Category III):”
- **SECTION 1111.7(a)(3).** The proposed amendment imposes a 180-day time limit on the process for reclassification of Category V buildings that may have “gained additional historical or architectural significance that may make it eligible for classification as a Category I, II, or IV building.”

HERITAGE POSITION: As set forth in Section 1106, the process for reclassification of Category V buildings involves several steps, including notice, referral to the HPC, action by the HPC, designation by the Board of Supervisors, and possible appeal to the Board of Supervisors. The amended language does not indicate when the 180-day clock would start, and Section 1106 does not currently include time limits to ensure speedy disposition. Such clarifications are critical and should incorporate input from staff, neighborhood advocates and the development community in order to be appropriately applied and fairly enforced.

On behalf of San Francisco Architectural Heritage, thank you for the opportunity to comment on Supervisor Wiener’s proposed amendments to Articles 10 and 11. Please do not hesitate to contact me at mbuhler@sfheritage.org or (415) 441-3000 x15 should you have any questions or need additional information.

Sincerely,



Mike Buhler
Executive Director

cc: Historic Preservation Commission
Supervisor Scott Wiener
John Rahaim, Director of Planning
Eugene Flannery, Mayor’s Office of Housing
Milford Wayne Donaldson, FAIA, State Historic Preservation Officer
Gabriel Metcalf, SPUR
Anthony Veerkamp, National Trust for Historic Preservation

⁸ Email from Lucinda Woodward, Supervisor, Local Government Unit, California Office of Historic Preservation, to Tim Frye and Charles Chase, regarding “Proposed Changes to Articles 10 & 11,” October 3, 2011 (emphasis added).